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SENATE

REPORT
101-296

COLORADO RIVER WILD AND SCENIC RIVER ADDITION ACT OF 1990

MAY 18 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1719]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1719) to designate a segment of the Colorado River in the Westwater Canyon, Utah, as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado River Wild and Scenic River Addition Act of 1990".

SEC. 2. SEGMENTS OF THE COLORADO RIVER TO BE ADDED AS COMPONENTS OF THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a) of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1274(a)), is further amended by adding the following new paragraph:

"( ) COLORADO RIVER, UTAH.—(A) The segment within Westwater Canyon from the point where the river crosses the northern boundaries of sections 22 and 23 of Township 20 South, Range 25 East, to the point where the river crosses the western boundary of section 24 of Township 21 South, Range 24 East, as a wild river, to be administered by the Secretary of the Interior.

"(B) The segment within Cataract Canyon from the north boundary of Canyonlands National Park downstream to the southern park boundary, as a wild river, to be administered by the Secretary of the Interior.".

SEC. 3. TREATMENT OF MINERAL MATERIALS ON PUBLIC LANDS.

(a) Section 4 of the Act entitled "An Act to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same

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tracts of public lands, and for other purposes", approved July 23, 1955 (69 Stat. 368, 30 U.S.C. 612) is amended—

(1) in subsection (b) by—

(A) striking "vegetative" and inserting in lieu thereof, "vegetative and mineral material"; and

(B) inserting after the second proviso the following: "*Provided further*, That if at any time the locator requires more mineral material for his mining operations than is available to him from the claim after disposition of mineral material therefrom by the United States subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with mineral material for such requirements from the nearest mineral material site administered by the disposing agency which contains mineral material substantially equivalent to that estimated by the disposing agency to have been disposed of from the claim subject to reasonable rules and regulations for the protection of nonmineral resource values including environmental values:"; and

(2) in subsection (c) by striking "vegetative" and inserting in lieu thereof, "vegetative and mineral material".

Amend the title to read as follows:

A bill to designate segments of the Colorado River in Utah within Westwater and Cataract Canyons as components of the Wild and Scenic Rivers System, and for other purposes.

Purpose of the Measure

The purposes of S. 1719 are to designate segments of the Colorado River in Utah within Westwater and Cataract Canyons as components of the Wild and Scenic Rivers System and to provide for the disposal of mineral materials on unpatented mining claims located on public lands.

Background and Need

The segment of the Colorado River flowing through Westwater Canyon in eastern Utah contains some of the most scenic, remote and untouched stretches of the river. The segment is located within the Westwater Study Area and is bordered by Federal land administered by the Bureau of Land Management. Westwater Canyon is perhaps best known for its class 3 and class 4 rapids. Because of the river's large concentration of strong rapids, the Westwater Canyon stretch is extremely popular with boaters.

In addition to recreational uses, the segment within Westwater Canyon also provides important habitat for several threatened and endangered species. The Humpback Chub and Colorado Squawfish, two endangered species, both live within the segment. The river is also home to the Razorback Sucker, another threatened species.

The segment within Westwater Canyon is approximately 12 miles long. Within the segment, there are no roads or other vehicle access points. A 1979 National Park Service Study recommended designating the stretch as a wild river.

The 45-mile segment within Cataract Canyon added as part of the Committee amendment also possesses similar high quality scenic, recreational and habitat values, making it suitable for designation as a wild river.

Legislative History

S. 1719 was introduced by Senators Garn and Hatch on October 3, 1989. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on March 6, 1990.

At the business meeting on April 25, 1990, the Senate Committee on Energy and Natural Resources ordered S. 1719, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on April 25, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1719, if amended as described herein.

The roll call vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers*	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad*	
Mr. Heflin*	
Mr. R ckefeller*	
Mr. McClure	
Mr. Hatfield*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn	
Mr. McConnell	

*Indicates voted by proxy

Committee Amendments

During the consideration of S. 1719, the Committee adopted an amendment in the nature of a substitute. The amendment changed the designation of the segment of the river within Westwater Canyon from "scenic" to "wild." In addition, the amendment designates an approximately 45-mile stretch of the river within Cataract Canyon in Canyonlands National park as a wild river. The additional segment is completely within the park boundaries and will not affect private landowners.

Finally, the Committee-reported bill amends "an Act to amend the Act of July 31, 1947 and the mining laws to provide for multiple use of the surface of the same tracts of public lands, and for other purposes", approved July 23, 1955 ("the 1955 Act"), to specifi-

cally authorize the United States to dispose of mineral materials from unpatented mining claims.

The 1955 Act granted the United States the right to manage and dispose of the vegetative surface resources and to manage other surface resources (30 U.S.C. 612) of mining claims prior to issuance of a patent. There have been varying interpretations of the applicability of this provision to the disposal of mineral materials on unpatented mining claims located on public lands. (The 1947 Act, as amended by the 1955 Act, states that mineral materials include, but are not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay.) The disposal of such mineral materials is an issue in states where public lands with mineral material deposits needed for industrial construction are blanketed with unpatented mining claims. The Committee amendment resolves this problem by specifically allowing for the disposal of these mineral materials.

The Committee also adopted an amendment to the title, to reflect the changes incorporated into the bill.

Section-by-Section Analysis

Section 1 entitles the Act the "Colorado River Wild and Scenic Rivers Act of 1990".

Section 2 amends section 3(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1275(a)) to add two segments of the Colorado River in Utah, as components of the National Wild and Scenic Rivers System. The first segment is a 12-mile stretch of the river located within Westwater Canyon, designated as a wild river and administered by the Secretary of the Interior.

The second segment, approximately 45 miles long, would also be designated as a wild river administered by the Secretary of the Interior. The second segment is within Cataract Canyon, defined in the legislation as beginning from the northern boundary of Canyonlands National Park, downstream to the southern park boundary.

The Committee does not intend that the designation of these components of the Wild and Scenic Rivers System requires or otherwise implies the creation of a buffer zone or zones outside of the authorized boundaries of these components solely by reason of their designation. Furthermore the Committee does not intend that this Act or any other Act shall be construed to impair valid existing rights which may exist within the Wild and Scenic River corridors designated by this Act.

Section 3 concerns the treatment of mineral materials on public lands. Subsection (a)(1) provides that section 4(b) of the 1955 Act, as amended, is amended by striking "vegetative" and inserting "vegetative and mineral material" and by inserting after the second proviso that if at any time the locator requires more mineral material for his mining operations than is available to him, he shall be entitled, free of charge, to be supplied with mineral material for such requirements from the nearest mineral material site administered by the disposing agency which contain mineral material substantially equivalent to that estimated by the disposing agency to have been disposed of from the claim subject to reasonable rules and reg-

ulations for the protection of nonmineral values including environmental values.

Subsection (a)(2) is self-explanatory.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 16, 1990.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1719, a bill to designate segments of the Colorado River in Utah within Westwater and Cataract Canyons as components of the Wild and Scenic Rivers System, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on April 25, 1990.

S. 1719 would designate a 13-mile segment of the Colorado River in Utah as a wild river to be managed by the Bureau of Land Management (BLM) and the National Park Service (NPS). Based on information from these agencies, we estimate that this wild river designation would result in additional costs to the federal government totaling about $500,000 over the next five years, assuming appropriation of the necessary funds. These costs would cover additional planning and management activities and land acquisition.

S. 1719 would also give the BLM the authority to allow nonfederal parties to remove sand and gravel from federal lands that are covered by unpatented mining claims. Information from BLM indicates that enactment of this provision would not result in significant additional costs to the federal government.

Enactment of S. 1719 would not affect the budget of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Teresa Gullo, who can be reached at 226-2860.

Sincerely,

Robert F. Hale
(For Robert D. Reischauer).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1719. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1719, as reported.

EXECUTIVE COMMUNICATIONS

On November 30, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of Interior, the Federal Energy Regulatory Commission and the Office of Management and Budget setting forth Executive views on S. 1719. At the time the report on S. 1719 was filed, the Committee had only received the report of the Federal Energy Regulatory Commission, which is printed below. When the other reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the subcommittee hearing follows:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, December 26, 1989.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of November 30, 1989, concerning S. 1719, a bill designating a segment of the Colorado River in Westwater Canyon, Utah, as a component of the National Wild and Scenic River System. Pursuant to your request, enclosed are 50 copies of the Commission staff analysis of the bill for the use of the Senate Committee on Energy and Natural Resources.

I appreciate your inquiry. If I can be of further assistance in this matter, please do not hesitate to contact me.

Yours truly,

MARTIN L. ALLDAY.

Enclosures.

STAFF REPORT OF S. 1719, 101ST CONG., 1ST SESS., A BILL DESIGNATING A SEGMENT OF THE COLORADO RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

On October 3, 1989, Senators Garn and Hatch introduced S. 1719, which would designate a segment of the Colorado River in the Westwater Canyon, Utah, as a component of the National Wild and Scenic Rivers System. This segment of the Colorado River would be from the point where the river crosses the northern boundaries of sections 22 and 23 of the township 20 south, range 25 east, to the point where the river crosses the western boundary of section 24 of township 21 south, range 24 east.

It appears that this proposed legislation would not have any effect on the Commission's hydropower projects along this segment of the Colorado River.

Because Section 5(a) of the Wild and Scenic Rivers Act prohibits hydroelectric development within a component of the Wild and Scenic Rivers Systems, the Commission, in the future, would not issue a license for any proposed hydroelectric projects located within the designated area.

STATEMENT OF DEAN STEPANEK, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Good morning. I appreciate the opportunity to testify in support of S. 1719, a bill designating a segment of the Colorado River within the Westwater Canyon, Utah, as a component of the National Wild and Scenic Rivers System, and classifying it as a scenic river. This legislation would designate the first wild and scenic river segment in Utah. The 12-mile long segment is currently administered by the Secretary of the Interior through the Bureau of Land Management (BLM).

S. 1719 specifies that designation of this component would not require or imply creation of a buffer zone outside of component boundaries, solely by reason of its designation. S. 1791 would also expressly provide that nothing in "this Act or any other Act" shall be construed to impair valid existing rights which may exist within the designated "Wild and Scenic River corridor".

We enthusiastically support enactment of this legislation.

However, should Congress enact the more protective "wild" classification for Westwater Canyon, we would have no objection. In either case, we recommend one technical change that I will discuss shortly.

The Westwater Canyon is prime habitat for the endangered big-river fish of the Colorado System. Specifically, the Westwater Canyon supports populations of the endangered humpback chub and endangered Colorado squawfish. Also occurring in the Westwater Canyon is the razorback sucker, a Category 1 candidate species under the Endangered Species Act. The species is unique and irreplaceable on a national basis or in the ecoregion section. Designation of the Westwater Canyon segment of the Colorado River as a component of the Wild and Scenic Rivers System would benefit conservation of these fish.

The segment is also highly significant for recreational values. The BLM has been managing recreational boating within the river corridor in order to maintain the primitive character of the Canyon. About 10,000 people, including both private boaters and passengers on commercial trips, use Westwater Canyon every year. Currently almost twenty commercial outfitters use the Canyon, carrying over 4,000 passengers.

There is wide support in the State of Utah for legislation along the lines of S. 1719. In fact, both the Grand County Commissioners and local river outfitters support the more protective classification of "wild" river. A Wild and Scenic Rivers study completed by the National Park Service in 1979 recommended that this river segment be classified as a wild river. There has been no development since then which would change that potential classification.

Under either designation, wild or scenic, the BLM is prepared to manage the area in a manner that is compatible

with the goals and objectives BLM recently issued in Recreation 2000: A Strategic Plan. The purpose of the Plan was to provide a clear statement of BLM recreation management policies and goals and assure that recreation is an equal partner within the family of multiple use management. The implementation of the policies and goals in the Plan is addressed in BLM's Recreation 2000 Implementation Plan approved in January 1989. Challenge 3 of the Implementation Plan includes goals, issues, management objectives and implementation actions for proper resource management and protection of wild and scenic rivers, through an on-the-ground management presence.

We recommend that the last sentence of the bill, lines 17–20 on page 2, be changed to eliminate reference to the valid existing rights within the "corridor" designated and to refer to "boundaries of the component" or "segment" in order to be consistent with other references in that subsection. The term "corridor" is not defined in the legislation or on the map and could lead to confusion.

This concludes my prepared statement. I will be pleased to answer questions.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

Wild and Scenic Rivers Act

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act."

* * * * * * *

Sec. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * * * *

( ) Colorado River, Utah.—(A) The segment within Westwater Canyon from the point where the river crosses the northern boundaries of sections 22 and 23 of Township 20 South, Range 25 East, to the point where the river crosses the western boundary of section 24 of Township 21 South, Range 24 East, as a wild river, to be administered by the Secrtary of the Interior.

(B) The segment within Cataract Canyon from the north boundary of Canyonlands National Park downsteam to the southern park

boundary, as a wild river, to be administered by the Secretary of the Interior.

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AN ACT TO amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes

(69 Stat. 368)

* * * * * * *

SEC. 4(a) * * *

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(b) Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the **[**vegetative**]** *vegetative and mineral material* surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided further, That if at any time the locator requires more mineral material for his mining operations than is available to him from the claim after disposition of mineral material therefrom by the United States subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with mineral material for such requirements from the nearest mineral material site adminstered by the disposing agency which contains mineral material substantially equivalent to that estimated by the disposing agency to have been disposed of from the claim subject to reasonable rules and regulations for the protection of non-mineral resource values including environmental values: Provided further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided further,* That nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

(c) Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures, in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any [vegetative] *vegetative and mineral material* or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

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